

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS, *
*
Plaintiff, *
*
v. * Case No. 3:06-cv-0544-WHA
*
PHENIX CITY, ALABAMA, et al., *
*
Defendants. *

**DEFENDANTS H.H. ROBERTS and WALLACE HUNTER'S MOTION FOR
LEAVE TO AMEND ANSWER PLEADING THE AFFIRMATIVE DEFENSE OF
QUALIFIED IMMUNITY**

COME NOW the Defendants H. H. Roberts and Wallace Hunter and
request that the Court provide leave for amendment to their answer as follows:

1.

These Defendants wish to plead the defense of qualified immunity as to
each of them at the trial of this case.

2.

As grounds for this request these Defendants say that they did not plead or
raise this defense at the earlier stages in this case and that they do not intend to
plead it here for the purpose of delay.

3.

These Defendants are both employees of the City of Phenix City, Alabama and that the acts complained of by Plaintiff against them were all performed in the line and scope of their employment as City Manager and Chief of the Phenix City Fire Department respectively.

4.

These Defendants performed no acts against the Plaintiff except in their official capacities and as such are clothed with qualified immunity.

5.

There is no prejudice to the Plaintiff in the allowance of this defense as the evidence now as in every other previous point in this litigation is exactly the same as to the capacity of these Defendants as City Manager and Chief of the Fire Department. Further, there is no dispute that the acts complained of by the Plaintiff were done by these Defendants under color of law and in their capacities as employees of the City of Phenix City.

6.

While it is certainly in the discretion of the Court to allow this defense for the first time at the trial stage of the proceedings, the Eleventh Circuit has consistently recognized that qualified immunity can be pled at various stages in a case including at trial. Skratch v. Thornton, 280 F.3d 1295 (11th Cir. 2002). Also

see Fry v. Hillsborough County Sch. Bd., 190 Fed. Appx. 810 (11th Cir. 2006).

WHEREFORE, the above premises considered, the above Defendants request leave of Court to amend their answer by filing the additional affirmative defense of qualified immunity on behalf of each of them.

MCKOON, THOMAS & MCKOON

/s/ James R. McKoon

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CERTIFICATE OF SERVICE

I hereby certify that I have this the 6th day of August, 2007, served a copy of the foregoing to all attorneys of record by transmitting it through the CM/ECF system as follows:

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